

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL EUGENE McINTEE,

Petitioner,

Case No. 1:09-cv-873

v.

Honorable Paul L. Maloney

HUGH WOLFENBARGER,

Respondent.

ORDER REGARDING LEAVE TO PROCEED
IN FORMA PAUPERIS ON APPEAL

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254, challenging his conviction and sentence. On January 9, 2015, the Court entered an order and judgment dismissing the petition. The Court also denied Petitioner a certificate of appealability. The judgment of dismissal followed the Court's *de novo* review of Petitioner's objections to the report and recommendation of the magistrate judge. Petitioner now has filed a notice of appeal and a motion to proceed *in forma pauperis* on appeal (docket ##73-74).

Federal Rule of Appellate Procedure 3(e) provides that the appellant must pay all required fees at the time a notice of appeal is filed with the district court. The docketing fee for a case on appeal is \$500.00. *See* 28 U.S.C. § 1913; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Dec. 1, 2013). In addition, under 28 U.S.C. § 1917, a \$5.00 filing fee must be paid to the district court. Petitioner has failed to pay the required fees.

Petitioner was permitted to proceed before this Court *in forma pauperis*. Pursuant to Rule 24(a) of the Federal Rules of Appellate Procedure, he may continue that status on appeal unless this

court certifies that his appeal is not taken in good faith. Good faith is judged objectively, and an appeal is taken in good faith when it seeks review of an issue which is not frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1961). Detailed reasons for dismissal of the petition were provided in the report and recommendation (docket #65), which was adopted by this Court (docket #71).

The Court reaffirms its decision and finds that the issues on which Petitioner might seek review are frivolous. The Court, therefore, certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$505.00 appellate fee to the Clerk of this Court within 28 days of this order. *See* 28 U.S.C. §§ 1913, 1917; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Dec. 1, 2013). Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

The Court already has denied Petitioner a certificate of appealability (docket #71). Accordingly:

IT IS ORDERED that Petitioner is DENIED leave to proceed *in forma pauperis* on appeal. The Court certifies that the appeal is not taken in good faith. If Petitioner wishes to proceed with his appeal, he must pay the \$505.00 appellate fee to the Clerk of this Court within 28 days of this order. *See* 28 U.S.C. §§ 1913, 1917; 6 Cir. I.O.P. 3; Court of Appeals Miscellaneous Fee Schedule § 1 (Dec. 1, 2013). Alternatively, Petitioner may file a motion for leave to proceed *in forma pauperis* in the Court of Appeals pursuant to the requirement set forth in FED. R. APP. P. 24(a)(5).

Dated: February 3, 2015

/s/ Paul L. Maloney
Paul L. Maloney
Chief United States District Judge